

DAVID W. HEASTON
Claimant

BENNETT ROGERS PIPE COATING
Respondent

TRAVELERS INSURANCE COMPANY
Insurance Carrier

(1) Claimant alleged he suffered a work-related injury while employed by the respondent on February 23, 1995. Claimant testified that a fellow employee hit him twice in the face

during an unprovoked attack. Following the attack, claimant drove himself to a local medical clinic for treatment of his injuries. The medical clinic released the claimant from treatment and recommended that claimant see an eye specialist because of his injuries.

Claimant returned to work and notified the respondent's manager of his injuries. Claimant also requested medical treatment through an eye specialist. The respondent declined to provide claimant with medical treatment. Claimant was off work for approximately ten days and then returned to work for the respondent for four to five more weeks. On the date of the preliminary hearing, June 17, 1997, claimant was no longer employed by the respondent. He testified he was employed part-time by the Kansas City Star as a delivery specialist.

After respondent refused to provide claimant with medical treatment for his eye injury, claimant was able to secure medical treatment in January of 1996 that was paid through his wife's health insurance policy. Claimant received treatment for his eye injuries from Charles H. Barnes, M.D., of the Mid-America Retina Consultants, P.A., of Kansas City, Missouri, and by Michael C. Stiles, M.D., of the Hunkeler Eye Centers of Kansas City, Missouri. Dr. Barnes performed surgery on claimant's right eye for a detached retina on January 26, 1996, and followed claimant until he referred claimant to Dr. Stiles who first saw claimant on June 26, 1996. Dr. Stiles' medical report dated June 28, 1996, to Dr. Barnes was entered into evidence at the preliminary hearing. In that report, Dr. Stiles diagnosed claimant as a glaucoma suspect, status post-retinal detachment repair with increased cataract formation. Dr. Stiles placed claimant on medication and outlined a regimen of continuing medical treatment for both of claimant's eyes.

The parties, for preliminary hearing purposes, stipulated to a date of accident of February 23, 1995, and a date that the claimant served respondent with a written claim for compensation of December 21, 1996. The preliminary hearing record also reflects that the respondent filed an Employer Report of Accident with the Division of Workers Compensation on February 27, 1995. Therefore, as required by K.S.A. 44-520a, a written claim for compensation was required to be served on the respondent within 200 days after the date of accident or last payment of compensation. As previously stated, the employer denied that claimant was entitled to compensation benefits and, therefore, no compensation had been paid by the respondent as of the date of the preliminary hearing.

Obviously, when the stipulated date of accident of February 23, 1995, is compared with the stipulated date written claim was served on the respondent of December 21, 1996, that period of time exceeds the 200 days allowed a claimant to serve a written claim for compensation on the respondent. The claimant, however, argues that he met the requirements of K.S.A. 44-520a, when he contacted an ombudsman at the Division of Workers Compensation on the day following his accident, February 24, 1995. The ombudsman then contacted respondent's workers compensation insurance carrier and faxed to the carrier certain Appeals Board decisions concerning whether or not injuries received from fighting in the work place were compensable.

Claimant argues that a written claim requirement for compensation was satisfied when the ombudsman faxed the insurance carrier the Appeals Board decisions on March 13, 1995. Furthermore, claimant contends that the Employer Report of Accident was sent

to the insurance carrier by the respondent and the report meets the written claim requirement. Claimant concludes that both of these written communications satisfies the written claim requirement of K.S.A. 44-520a in accordance with the principals announced by the Kansas Supreme Court in the case of Ours v. Lackey, 213 Kan. 72, 515 P.2d 1071 (1973).

The Appeals Board disagrees with the argument made by the claimant and finds the Administrative Law Judge's preliminary hearing Order that found claimant had not served a timely written claim on the respondent should be affirmed. First of all, the Employer Report of Accident cannot be used as evidence in a workers compensation case for any purpose which would include being used as a written claim for compensation. See K.S.A. 44-557(b). Second, the Appeals Board concludes that the single act of an employee of the Division of Workers Compensation of sending Appeals Board decisions to the insurance carrier is not analogous to the facts contained in Ours. The Kansas Supreme Court in Ours found that the respondent had prepared numerous written communications on claimant's behalf in an effort to obtain workers compensation benefits for the claimant. Those written communications were determined to satisfy the written claim requirement as it was apparent the respondent was aware of the fact that claimant was making a claim for compensation. 213 Kan. at 81.

Accordingly, the Appeals Board finds that the claimant did not serve the respondent with a written claim for compensation until December 21, 1996, which was more than 200 days from claimant's date of accident of February 23, 1995. Thus, claimant's written claim for workers compensation benefits was not timely and benefits are denied.

(2) This issue will not be addressed by the Appeals Board as it is rendered moot by the above finding.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Steven J. Howard dated June 18, 1997, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of August 1997.

BOARD MEMBER

c: Robert W. Harris, Kansas City, KS
Kenneth J. Hursh, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director